

# HOUSE BILL REPORT

## ESSB 5796

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**As Passed House:**

March 6, 2024

**Title:** An act relating to common interest communities.

**Brief Description:** Concerning common interest communities.

**Sponsors:** Senate Committee on Law & Justice (originally sponsored by Senators Pedersen, Rivers, Kuderer, Nobles and Shewmake; by request of Uniform Law Commission).

**Brief History:**

**Committee Activity:**

Housing: 2/14/24, 2/19/24 [DPA].

**Floor Activity:**

Passed House: 3/1/24, 59-37.

Passed House: 3/6/24, 61-35.

**Brief Summary of Engrossed Substitute Bill**

- Allows the board of an association or any unit owner to amend their governing documents to remove an unlawful restriction based on race, color, religion, national origin, sex, or other personal characteristics.
- Adopts many of the most recent amendments to the Uniform Common Interest Ownership Act and codifies them into the Washington Uniform Common Interest Ownership Act.
- Repeals the Horizontal Property Regimes Act, the Washington Condominium Act, the Homeowners' Association Act, and the Land Development Act, effective January 1, 2028.

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**HOUSE COMMITTEE ON HOUSING**

**Majority Report:** Do pass as amended. Signed by 11 members: Representatives

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.*

Peterson, Chair; Alvarado, Vice Chair; Leavitt, Vice Chair; Klicker, Ranking Minority Member; Connors, Assistant Ranking Minority Member; Barkis, Bateman, Chopp, Entenman, Reed and Taylor.

**Minority Report:** Do not pass. Signed by 1 member: Representative Hutchins.

**Minority Report:** Without recommendation. Signed by 1 member: Representative Low.

**Staff:** Austin Borcharding (786-7094).

**Background:**

Common Interest Community.

A common interest community (CIC) is a form of real estate in which each unit owner or homeowner has an exclusive interest in a unit or lot and a shared or undivided interest in common area property.

Uniform Law Commission.

The Uniform Law Commission (ULC) was created in 1892 and is comprised of state commissions on uniform laws from each state. The ULC studies and reviews the law of the states to determine which areas should be uniform, and drafts and proposes specific statutory language that may be adopted by states.

Uniform Common Interest Ownership Act.

In 1982 the ULC promulgated the original version of the Uniform Common Interest Ownership Act (UCIOA) which governs various types of CICs including condominiums, plat communities, and cooperatives. The ULC has since approved a number of amendments thereto, including the most recent amendment in 2021 which overhauled many of the UCIOA's provisions.

The Washington Uniform Common Interest Ownership Act.

The Washington Uniform Common Interest Ownership Act (WUCIOA) codifies the UCIOA into Washington law and took effect on July 1, 2018. It is applicable to CICs created after that date, and CICs created prior to the effective date may choose to opt in to the WUCIOA, which contains comprehensive provisions addressing the management of property under its jurisdiction.

Under the WUCIOA, declaration means the instrument, however denominated, that creates a CIC including any amendments to the instrument.

Under the WUCIOA, a special declarant right is an interest in real estate. The interest applies to all units owned by the declarant and to real estate that is subject to a development right.

Under the WUCIOA, declarant means:

- any person who executes as declarant a declaration;
- any person who reserves any special declarant right in a declaration;
- any person who exercises special declarant rights or to whom special declarant rights are transferred of record; or
- any person who is the owner of a fee interest in the real estate that is subjected to the declaration at the time of the recording of an instrument under the WUCIOA and who, directly or through one or more affiliates, is materially involved in the construction, marketing, or sale of units in the CIC created by the recording of the instrument.

Common Interest Communities Created Before the Washington Uniform Common Interest Ownership Act.

CICs created before July 1, 2018, remain subject to the following acts, which generally leave much of the working of a CIC to the governing documents:

- the Horizontal Property Regimes Act, which applies to residential condominiums created on or before July 1, 1990;
- the Washington Condominium Act, which applies to condominiums created after July 1, 1990; and
- the Homeowners' Association Act, which provides a framework for the formation and legal administration of homeowners' associations.

Common Interest Community Administration.

A CIC is administered by an association of unit owners or a homeowners' association—an organization consisting of property owners and homeowners within the CIC. An association of unit owners derives its authority from several documents including: the declaration of covenants, conditions, and restrictions; the association's bylaws and articles of incorporation; and the deeds to the property within a development.

The primary functions of a unit owners' association include: managing and maintaining common areas, such as parks, roads, and community centers, for the benefit of the community; imposing and collecting assessments on unit owners; and enforcing restrictive covenants that govern the community. In addition, a unit owners' association may adopt rules and regulations concerning property use in the community and impose fines for violations of those rules.

Uniform Unlawful Restrictions in Land Records Act.

In 2023 the ULC approved the Uniform Unlawful Restrictions in Land Records Act which allows the removal of unlawful restrictive covenants from the deeds of homes, and from the governing documents of condominiums and other homeowner associations. In general, unlawful restrictions are those which interfere with or restrict the transfer, use, or occupancy of real property on the basis of race, color, religion, national origin, sex, or other personal characteristics.

**Summary of Bill:**

### Unlawful Restrictions in Governing Documents.

The board of an association may amend governing documents to remove an unlawful restriction without a vote from unit owners even where the governing documents would normally require a vote for such an amendment.

A unit owner may request removal of an unlawful restriction. Such a request must include information sufficiently identifying the alleged unlawful restriction, and once the request is made, the board must determine whether the restriction is in fact unlawful within 90 days. If the board finds that the restriction is unlawful, it must amend the governing documents to remove the restriction within 90 days of that finding.

### 2021 Amendments to the Uniform Common Interest Ownership Act.

#### *Scope.*

Amendments to WUCIOA apply to all CICs within the state. The WUCIOA does not apply to CICs outside of Washington, but it does apply to contracts for the disposition of a unit in a CIC if the contract was signed within the state.

A CIC's declaration may contain a provision which delegates the powers of the unit owners' association to a master association, and such a delegation may only be revoked by an amendment to the declaration. A unit owners' association may also delegate their powers to a master association without amending the declaration so long as proper notice is given to the unit owners of the association's intent to execute such a delegation.

#### *Merger of Common Interest Communities.*

Two or more CICs may be merged or consolidated into a single community by agreement of the unit owners or by an exercise of a special declarant right. If the latter is utilized, the merger does not require unit owner approval.

#### *No Adverse Possession.*

No unit owner may acquire the title to a common element by means of adverse possession.

#### *Quorum.*

Quorum for a meeting of unit owners is achieved if, at the beginning of a meeting, 20 percent of the votes in the association attend in person, by proxy, or by absentee ballot.

Unit owners may attend meetings via telephone, video, or other conferencing process.

#### *Exclusive Cost Assessments.*

A declaration may include an expense for a common element which is to be assessed exclusively against a particular unit or units, rather than by common expense liability, only if it also identifies the common expense by specific listing or category.

The association may assess expenses exclusively against a unit owner's unit common expenses for damage to or loss of property caused by willful misconduct or gross

negligence on the part of the unit owner or the unit owner's tenant, guest, invitee, or occupant.

The association may also assess expenses exclusively against a unit owner for failure to comply with a maintenance standard prescribed by the declaration or a rule, or negligence if the declaration contains a statement that an owner may be liable for damage or loss caused by such negligence. A unit owner must be given notice and opportunity for a hearing before such expenses may be assessed, and any expenses imposed will be paid first out of any insured proceeds received by the association.

Additional Amendments to Washington Uniform Common Interest Ownership Act.

*Governing Documents—Rights and Liabilities.*

Governing documents may not change the rights, obligations, or liabilities of unit owners, declarants, associations, or boards save for the specific allowances provided under the WUCIOA.

*Development Rights.*

Declarations must contain a description of any development right reserved by the declarant, and a legal description of the real property to which any development right applies, but do not need to contain a description of real estate boundaries affected by development rights.

*Reallocation of a Limited Common Element.*

When a request for the reallocation of a limited common element is approved, the unit owners making the request must provide the association with the proposed amendment for review prior to its execution. All costs associated with such an amendment are borne by the affected unit owners.

A common element not previously allocated as a limited common element may be so allocated only by an amendment to the declaration. If a unit owner requests an amendment to the declaration allocating all or part of a common element to that unit owner's exclusive use, the association may include in the amendment a specific condition or requirement of that exclusive use, including that the unit owner perform upkeep or pay a fee. If any such amendments are approved, the board must give notice to all other unit owners that they may object. If a timely objection is received, the amendment only becomes effective if more than two-thirds of the total votes, excluding the requesting unit owner's vote, are cast in support of the requested allocation. If the amendment becomes effective, the association and benefited owner must execute the amendment, and the association must record it, including preparing and recording any revised property maps if necessary.

*Relocation of Boundaries.*

The boundary of a unit may be relocated only by an amendment to the declaration.

A unit owner may request the board to amend the declaration to include all or part of a common element within the unit owner's unit. Such an amendment only becomes effective

if more than two-thirds of the total votes, excluding the requesting unit owner's vote, are cast in support of the requested relocation.

The association and the owners of the units whose boundaries are relocated must execute an amendment which must contain words of conveyance between the parties. The association must record the amendment, including preparing and recording revised property maps.

*Boundary Encroachment.*

If construction, reconstruction, or alteration results in the physical boundary of a unit diverging from the boundary described for that unit in the declaration, the new physical boundaries of the unit are its legal boundaries. This allowance does not apply, however, if that divergence constitutes an encroachment into the property of another unit that is more than 5 feet or is the result of willful misconduct on the part of the encroaching owner.

*Optional Majority Increase Removed.*

The option for a declaration to require a higher percentage of unit owner approval in order to prohibit or restrict certain uses or protect certain interests is removed.

*Termination of Common Interest Community.*

A CIC may only be terminated by agreement of 80 percent of its votes, but that 80 percent must be exclusive of the declarant who is moving for such termination.

Declarations may set the required vote percentage for termination above 80 percent, but they cannot set it lower.

A termination agreement may provide for the sale of some or all common elements, but does not change title to a unit or common element unless the agreement specifically provides for such.

Upon termination, the respective interest of a unit owner is the fair market value of their unit immediately before the termination. If an owner disagrees with the valuation of their unit made by the appraiser whom the association has selected, the owner may select their own appraiser to represent them.

A termination agreement may provide for the termination of fewer than all of the units in a CIC. Such termination must be approved by at least 80 percent of the votes belonging to the units being terminated. If this occurs, the termination agreement must reallocate the interests of the remaining units, and the unit owners' association continues as the association for the remaining units.

*Powers and Duties of a Unit Owners' Association.*

An association must grant easements, leases, and licenses through or over the common elements, but when a grant benefits the requesting owner's unit, that grant may only be made by reallocation supported by more than two-thirds of the CIC's votes.

Reallocation is not required to install an electric vehicle charging station in a common element.

Associations may not extend a suspension of any right or privilege for failure to pay an assessment beyond one business day after the association receives full payment of the delinquent assessment.

Associations may not deny a unit owner or other occupant access to the owner's unit, or any limited common elements allocated only to that unit, or any common elements necessary to access the unit.

*Declarations—Appointment of Board Positions.*

A declaration may provide for the appointment of specified positions on the board by persons other than the declarant or an affiliate of the declarant during or after the period of declarant control. It also may provide a method for filling vacancies in those positions other than by election by the unit owners. However, after the period of declarant control, appointed members:

- may not comprise more than one-third of the board; and
- have no greater authority than any other board member.

*Notice of Elections.*

An association must provide notice to all unit owners prior to an election of board members.

*Transition of Board—Previous Declarant Responsibilities.*

A declarant must provide all originals or copies of the most recent reserve study to the newly elected board at the transition meeting.

*Transfer of Special Declarant Rights.*

A declarant may voluntarily transfer part or all of a special declarant right only by an instrument that describes the special declarant right being transferred.

With limited exceptions, the successor to a special declarant right is subject to all obligations and liabilities imposed on the transferor by the WUCIOA or the declaration.

If a declarant transfers a special declarant right to an affiliate of the declarant, the transferor and the successor are jointly and severally liable for all obligations and liabilities imposed on either person by the WUCIOA or the declaration.

A declarant who transfers a special declarant right to a nonaffiliate successor is liable for an obligation or liability, imposed by the WUCIOA or the declaration, that arose before the transfer, but is not liable for an obligation or liability that arose after it.

Nonaffiliate successors are not liable for obligations attached to rights that were not transferred to them, nor are they liable for obligations or liabilities under the WUCIOA or the declaration that relate to any of the following:

- a misrepresentation by a previous declarant;
- a warranty obligation on an improvement made by a previous declarant or before the CIC was created;
- breach of a fiduciary obligation by a previous declarant; or
- an obligation or liability imposed on the transferor as a result of the transferor's act or omission after the transfer.

A transferee may elect to acquire or reject a special declarant right where it is part of an involuntary transfer. They may also hold the right solely for transfer to another person whereby they may not exercise the right but are also not liable under it.

*Unit Owner Meetings—Matters Not Scheduled and Formats Allowed.*

Unit owners may discuss matters not included in a meeting notice as long as action is not taken on the matter without the consent of all unit owners.

Unit owner meetings do not need to be conducted at a physical location so long as they are conducted by a means that enables owners in different locations to communicate in real time, provided that such means must have an option for owners to communicate by telephone.

*Unit Owner Meetings—Manner of Voting.*

Unit owners or their proxies may vote in person or remotely. An association must implement reasonable measures to verify the identity of the unit owner and proxy.

Unless the declaration or organizational documents provide otherwise, an association may conduct a vote without a meeting. If this occurs, the association must notify owners and deliver voting ballot instructions, paper ballots for unit members who have not consented to electronic voting, and instructions for electronic voting if applicable. An association must implement reasonable measures to verify paper and electronic ballots.

The majority vote determines the outcome of a vote, unless a different number or fraction of votes is required by law or the declaration.

Procedures are set forth for instances of units with more than one owner vote.

A secret ballot is required for the following:

- election of board members;
- removal of board members or officers;
- amendments to the declaration or governing documents; or
- unit owner approval of an amendment to the declaration for the reallocation of a common element as a limited common element for the exclusive use of an owner's



unit.

*Liens and Foreclosures—Board Member Prohibitions.*

No member of the association's board, or their immediate family members or affiliates, are eligible to bid for or purchase any interest in a unit at a foreclosure of the association's lien.

*Association Duties—Records.*

Associations must retain originals or copies of plans and specifications, instruments of conveyance, or permits or certificates of occupancy delivered by a declarant.

With some exceptions, all records required to be retained by an association must be made available for examination and copying by an entitled party at the offices of the association or its managing agent within 10 days of the request.

A list of unit owners is not required to contain electronic addresses of unit owners who have elected to keep such information confidential. Records retained by an association must have such information redacted as well as any information which would compromise the anonymity of a secret ballot. A managing agent must deliver all electronic records to an association within five days and all written records within 10 business days of the management relationship ending or the board's demand.

*Emergency Powers.*

Associations are given leave to take certain actions during an emergency which are necessary to protect the health or safety of the public or residents of the CIC, the habitability of its units, or to prevent economic loss to the association.

*Flagpoles, Signs, and Waste Receptacles.*

Associations may not prohibit the installation of a flagpole on a unit or a limited common element for the display of the United States or Washington flags, but may include reasonable rules and regulations regarding the location and size of the flagpole.

Associations may not prohibit the display of signs, including outdoor signs, but may adopt reasonable rules governing the placement and manner of such displays.

Associations are prohibited from restricting unit owners from storing compost, garbage, or recycling receptacles, but the association may set requirements that receptacles are screened from view during periods they are not scheduled for collection.

*Electronic Addresses—Confidentiality.*

An owner may indicate whether they wish to keep their electronic address confidential and exempt from disclosure. Failure to deliver notice to the association of their desire to have their electronic address kept confidential permits disclosure by the association.

*Child Care Centers—Operating Costs.*

An association may require a family home childcare or child day care center operating in the association to pay any costs or expenses arising from the operation of the facility.

*Adult Family Homes.*

A unit owners' association may not prohibit the use of a unit as an adult family home, but may impose reasonable rules, including architectural standards, licensing, liability waiver, insurance, and facility access requirements. A unit owners' association that willfully violates this prohibition is liable to the adult family home in an amount not to exceed \$1,000.

*Public Offering Statements—Preparer Liability.*

A declarant must prepare a public offering statement in conformity with the WUCIOA before offering any interest in a unit to the public.

Whoever prepares all or part of the public offering statement is liable for any misrepresentation or omission contained therein where the preparer had actual knowledge or reasonably should have known of the misrepresentation or omission.

*Public Offering Statements—Required Content.*

For a condominium, plat community, or miscellaneous community containing a unit not having horizontal boundaries described in the declaration, a public offering statement must include a statement of whether the unit may be sold without consent of all the unit owners after termination of the CIC. Public offering statements must include form language indicating to a potential purchaser that the unit is located within a CIC and describing some of the conditions and requirements that accompany units within CICs.

*Public Offering Statements—Timing.*

The purchaser of a unit within a CIC must be provided with a copy of the public offering statement and all amendments thereto before conveyance of the unit, and not later than the date of any contract of sale.

*Resale Certificates—Required Content.*

A resale certificate must also include form language indicating to a potential purchaser that a unit is located within a CIC and describing some of the conditions and requirements that accompany units within CICs.

Conforming Amendments.

Technical changes are made to update statutory references to WUCIOA and eliminate references to repealed acts.

Applicability and Transition.

The Horizontal Property Regimes Act, the Washington Condominium Act, the Homeowners' Association Act, and the Land Development Act are repealed, effective January 1, 2028.

WUCIOA applies to all CICs beginning January 1, 2028. Common interest communities not governed by WUCIOA may continue to be governed by other applicable acts until January 1, 2028.

When a CIC created before January 1, 2018, becomes subject to WUCIOA, any inconsistent provision of the CIC's governing document is invalid unless certain exceptions apply.

The declaration of any CIC created before July 1, 2018, may be amended to provide that certain enumerated requirements of WUCIOA apply to the CIC.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill contains multiple effective dates. Please see the bill.

**Staff Summary of Public Testimony:**

(In support) This bill represents the culmination of two decades of work, much of which is meant to address the concerns which were raised with the Homeowners' Association Act and its inadequacies in terms of the modern governance of CICs.

This bill also addresses the issues that arise from CICs being governed by the several different legacy acts which this bill will repeal. This will bring us to a place where all CICs are governed by one act which was the original intention when we adopted the UCIOA back in 2018.

The time has come to provide one set of standards for all of these sorts of communities. Multiple other states have done this, and they have seen no explosion of sales falling through and other negative consequences. There is new and untested language providing for emergency powers, and one of the common complaints we see in these communities is the director and their president going rogue and doing what they want, and we would like to see something in the bill that protects against this. Resale certificates are important. They prevent someone from buying into a community where they are suddenly liable for tens of thousands of dollars of fees that they were not properly aware of.

This bill gets rid of inconsistencies across the various acts that currently govern these communities so that all of them have the same rights and protections across the state.

(Opposed) This bill has a few problems, which can be corrected. The first problem is the requirement for resale certification—both the seller and the buyer have to pay for the certification. The certificate has to be amended if it's more than 30 days old. Older communities are managed by laypersons who do not know how to fill, amend, or refill one

of these certificates. This leads to sellers not moving out until the buyer cannot back out. Buyers can back out up until five days after the certification is received, but for CICs that don't have the technical capacity to adequately fill and deliver the certificate, buyers will not receive this certificate until the changes they want are made, if at all. Because the seller will not move or fix the property until the buyer is bound by the deal, you are stuck in a catch 22 and the sale cannot proceed. The second problem is that under the current bill as drafted, there would still be CICs subject to the older law because of the carveouts for plat communities below a certain size. Nonetheless, this bill still provides for the repeal of those laws which would leave the CICs which fall into this gap ungoverned once the repeal takes place. The third problem is the negative financial impact this bill will have on smaller homeowners' associations (HOAs). The language introduced is complex legal language which common HOAs cannot easily follow. Thus, many HOAs may have to pay to hire attorneys or managers to ensure that they are compliant with the new requirements.

This bill violates the United States and Washington Constitutions by violating their prohibition on violating previously formed contracts. No other state has adopted the 2021 amendments in full. The 2021 bill does not contain any opt-out language.

There has not been a sufficient assessment on the impacts of this legislation on all of the people it will affect. Many small HOAs will not have the expertise to interpret and apply the complex legal elements of this bill, nor do they have the means to hire someone who can.

**Persons Testifying:** (In support) Senator Jamie Pedersen, prime sponsor; Steve Horvath, Homeowners of America United; and Hugh Lewis, Washington State Chapter of Community Association Institute.

(Opposed) Janet Landesberg; Phil Landesberg; Natalie Whitcomb; and Annie Fitzsimmons and Bill Clarke, Washington Realtors.

**Persons Signed In To Testify But Not Testifying:** None.